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ORIGINAL

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

2020 DEC 18 PM 2:55

DEPUTY CLERK

DANIEL DAVIES

Plaintiff,

v.

BANK OF AMERICA CORPORATION
D/B/A BANK OF AMERICA

Defendant.

Civil Action No.

3 - 20 CV 3674 - D

JURY TRIAL DEMANDED

PLAINTIFF'S SECOND AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiff, DANIEL DAVIES ("Plaintiff" or "Davies"), by counsel brings this action for violations under the Family and Medical Leave Act of 1993, U.S.C. §2601, *et seq.* (the FMLA") against the Defendant, Bank of America Corporation ("Defendant" or "Bank of America") and in support states as follows:

PARTIES

1. Davies is a citizen of the United States and a citizen and resident of the State of Texas, who resides at 344 Redstone Drive Sunnyvale, TX 75182-3239.

2. Defendant, Bank of America is a Delaware Corporation licensed to do business in the State of Texas. Defendant maintains its offices in Dallas, Texas 75201 and may be served through its registered agent, H.R. locate at P.O. Box 661060 Dallas, TX

75266

JURISDICTION AND VENUE

3. Pursuant to 28 U.S.C. § 1331, jurisdiction lies in the United States District Court for the Northern District of Texas, as this action involves a question of the application of federal law, including the Family and Medical Leave Act of 1993 (the "FMLA").

4. Venue for all causes of action stated herein lies in the Northern District of Texas because the Defendant resides in this District and because a substantial part of the events alleged in this Complaint took place within this District.

FACTUAL BACKGROUND

5. Plaintiff was hired as an Assistant Vice -President and Fiduciary Tax Account on or about 7-2005. Plaintiff was paid a salary of \$68,000.00.

6. Throughout Plaintiff's 14 years of service, Plaintiff never received a negative review or disciplinary action regarding his performance.

7. On or about May 29 2020, Plaintiff applied for FMLA to care for his wife who was pregnant expecting their second child.

8. After Plaintiff had submitted his application and received approval for his FMLA which was to begin upon the birth of his second child, Defendant terminated Plaintiff's employment for no apparent reason.

9. Plaintiff had not received any prior warning before being terminated. When Plaintiff asked why he had been terminated, he was informed that deposits had been made into his wife's account by other family members. Plaintiff volunteered to close down the account but was instead terminated.

10. The reason given for Plaintiff's termination – that his wife was receiving deposits into her account – is not worthy of credence. There is no evidence of any impropriety Or any wrongdoing by allowing deposits to be made into Plaintiff's his wife's account.

11. Plaintiff filed for unemployment with the Texas Workforce Commission and received unemployment compensation.

12. Plaintiff looked for work and performed the required work search activities to be eligible for unemployment benefits.

FIRST COUNT:

FAMILY AND MEDICAL LEAVE ACT RETALIATION

13. The foregoing paragraphs are incorporated herein as though fully set forth.

14. Plaintiff was an “eligible employee,” as that term is defined in 29 USC § 2611(2)(A). He was employed by Defendant for at least 12 months, and had worked at least 1,250 hours during the 12-month period preceding his request for leave.

15. Defendant was a “covered employer,” as that term is defined in 29 USCA 2611(4)(A)(I). Defendant was engaged in commerce, and it employed 50 or more employees for each working day during each of 20 or more calendar workweeks in 2018 and 2019.

16. Glenn gave her employer adequate notice of the fact that he needed to take FMLA protected leave, and of the reason why he needed to take FMLA-protected leave.

17. Plaintiff requested and FMLA-protected leave due to his wife’s serious health condition i.e. her pregnancy and post-partum health .

18. Defendant interfered with Plaintiff’s FMLA rights by terminating him in retaliation for his exercise or attempted exercise of FMLA-protected rights.

19. Plaintiff was terminated shortly after taking protected FMLA leave, and the reason given for his termination – that deposits and withdrawals had been made from his wife’s account is not worthy of credence, as set forth in Paragraph 10, above.

20. In addition, Defendant's actions prior to Plaintiff's taking medical leave indicate an impatience and dissatisfaction with the fact that Plaintiff was seeking medical leave.

21. Defendant's violation of the FMLA was willful or in reckless disregard of Plaintiff's statutory rights. The violation was not in good faith, and Defendant had no reasonable grounds to believe that it was not violating the FMLA.

22. As a result of the wrongful termination, Plaintiff has suffered damages in the form of lost wages and benefits. Plaintiff is entitled to back pay, plus interest on that amount, to compensate him for that damage. 29 USC § 2617(a)(1)(A)(i)-(ii).

23. Plaintiff is also entitled to statutory liquidated damages in an amount equal to the amount awarded as back pay with interest. 29 USC § 2617(a)(1)(A)(iii).

24. Because his damages are ongoing and unlikely to subside in the near future, Plaintiff is also entitled to the equitable remedy of front-pay. 29 USC § 2617(a)(1)(B).

25. Plaintiff has also had to retain the services of an attorney as a result of his wrongful termination, and is entitled to recover the attorneys' fees, witness fees, and court costs he has already incurred and that he will continue to incur as this cause proceeds. 29 USC § 2617(a)(3).

JURY DEMAND

26. Plaintiff requests a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that he be permitted to try his case to a jury of her peers, and that on final trial, Plaintiff have and recover the relief requested herein.

Respectfully Submitted,

PLAINTIFF,

DANIEL DAVIES

A handwritten signature in black ink, appearing to read 'D. Davies', with a long horizontal flourish extending to the right.

617-642-0611 Telephone

344 Redstone Dr

Sunnyvale, TX 75182

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

DALLAS

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

3 - 20 CV 3674 - D**DEC 18 2020**CLERK U.S. DISTRICT COURT
NORTH DALLAS, TEXAS**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

- | | | | | | |
|--|--|---|--|--|---|
| <input type="checkbox"/> 110 Insurance | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 365 Personal Injury - Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 375 False Claims Act |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability | <input type="checkbox"/> 690 Other | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | | <input type="checkbox"/> 820 Copyrights | <input type="checkbox"/> 400 State Reapportionment |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 330 Federal Employers' Liability | <input type="checkbox"/> 370 Other Fraud | | <input type="checkbox"/> 830 Patent | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 371 Truth in Lending | | <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 380 Other Personal Property Damage | | <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 450 Commerce |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 385 Property Damage Product Liability | | <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | | <input type="checkbox"/> 710 Fair Labor Standards Act | | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 360 Other Personal Injury | | <input type="checkbox"/> 720 Labor/Management Relations | <input type="checkbox"/> 861 HIA (1395ff) | <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) |
| <input type="checkbox"/> 190 Other Contract | <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | | <input type="checkbox"/> 740 Railway Labor Act | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 485 Telephone Consumer Protection Act |
| <input type="checkbox"/> 195 Contract Product Liability | | | <input type="checkbox"/> 751 Family and Medical Leave Act | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input type="checkbox"/> 490 Cable/Sat TV |
| <input type="checkbox"/> 196 Franchise | | | <input type="checkbox"/> 790 Other Labor Litigation | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 850 Securities/Commodities/Exchange |
| | | | <input type="checkbox"/> 791 Employee Retirement Income Security Act | <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 890 Other Statutory Actions |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 463 Alien Detainee | | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 891 Agricultural Acts |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 510 Motions to Vacate Sentence | | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 893 Environmental Matters |
| <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> 530 General | | | <input type="checkbox"/> 895 Freedom of Information Act |
| <input type="checkbox"/> 240 Torts to Land | <input type="checkbox"/> 443 Housing/Accommodations | <input type="checkbox"/> 535 Death Penalty | | | <input type="checkbox"/> 896 Arbitration |
| <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment | <input type="checkbox"/> 540 Mandamus & Other | | | <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision |
| <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 446 Amer. w/Disabilities - Other | <input type="checkbox"/> 550 Civil Rights | <input type="checkbox"/> 462 Naturalization Application | | <input type="checkbox"/> 950 Constitutionality of State Statutes |
| | <input type="checkbox"/> 448 Education | <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 465 Other Immigration Actions | | |
| | | <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Act of 1993 USC 2601 FMLA
Brief description of cause:
Employer Violation under FMLA

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____